

In re application of:

STEVEN M. UTTER

Serial No.: 09/358,280

**DEVICE** 

Filed: July 21, 1999

For:

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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5-3-00
| Thocher |
| Group Art Unit: 3752
| Docket No. MISTY-52064

## TERMINAL DISCLAIMER TO OBVIATE DOUBLE PATENTING REJECTION 37 C.F.R. 1.321(b)

Assistant Commissioner for Patents Washington, D.C. 20231

PORTABLE MIST COOLING

Dear Sir:

The petitioner, Steven M. Utter, is the owner of 100 percent interest in the instant application, serial no. 09/358,280, filed July 21, 1999, which is a continuation of serial no. 09/042,827, filed on March 17, 1998 for PORTABLE MIST COOLING DEVICE, which is a continuation of serial no. 08/802,072 filed February 19, 1997, now Patent No. 5,775,590, which is a continuation of serial no. 08/664,302 filed June 10, 1996, now Patent No. 5,620,140. To the best of petitioner's knowledge and belief, title in the instant application, serial no. 09/358,280, is in petitioner.

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Petitioner hereby disclaims, except as provided below, the terminal part of the

statutory term of any patent granted on the instant application, which would extend beyond the

expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently

shortened by any terminal disclaimer, of prior Patent No. 5,620,140, issued April 15, 1997, which

is also owned by petitioner. Petitioner hereby agrees that any patent so granted on the instant

application shall be enforceable only for and during such period that it and the prior Patent

No. 5,620,140 are commonly owned. This agreement runs with any patent granted on the instant

application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, petitioner does not disclaim the terminal part of any

patent granted on the instant application that would extend to the expiration date of the full statutory

term as defined in 35 U.S.C. 154 to 156 and 173 of the prior patent, as presently shortened by any

terminal disclaimer, in the event that it later expires for failure to pay a maintenance fee, is held

unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in

whole or terminally disclaimed under 37 CFR 1.321, has all claims cancelled by a reexamination

certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term

as presently shortened by any terminal disclaimer.

The undersigned is an attorney of record.

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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

April 21, 2000 Date

James W. Paul Reg. No. 29,967